HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL NO.10 OF 1988

From the judgment dated 14.09.1987 passed by Sri D.K. Jethi, J.M.F.C., Baripada in 2(B) C.C. Case No.29 of 1987 (T.C. No.212 of 1987).

State of Orissa ..... Appellant

Versus

Gadadhar Mahanta & others ..... Respondents

For appellant : Addl. Govt. Advocate

For respondents : M/s A.K.Mishra, S.K. Das, G. S. Panda, A.K. Mohanty and A.R.Mohanty.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 19.07.2006

PRADIP MOHANTY,J. This Government Appeal is directed against the judgment and order dated 14.09.1987 passed by the Judicial Magistrate First Class, Baripada in 2(B) C.C. Case No.29 of 1987 (T.C. No.212 of 1987) acquitting the respondents of the charges under Sections 37, 46, 55-A of the Orissa Forest Act (hereinafter referred as

"the Act'") and Rule 21 of the Orissa Timber and other Forest Produce Transit Rules (hereinafter referred to as "the Rules").

2. The case of the prosecution is that on 09.02.1986 at about 10.00 p.m. while performing patrol duty, the Forest Mobile Squad found the accused-respondents transporting three carts load of fire wood. On demand, they could not produce any authority for such transportation. Therefore, the Forest Guard (P.W.3) seized the fire wood and the carts and prepared a seizure list at the spot. Ultimately, prosecution report was filed by the Forester against the accused-respondents under the aforesaid sections of the Act and the Rules.

3. The plea of the accused-respondents was one of stout denial of the allegation.

4. In order to prove its case the prosecution examined as many as four witnesses and relied on one exhibit. None was examined on behalf of the accused-respondents.

5. Learned J.M.F.C., Baripada, who tried the case, by his judgment dated 14.09.1987 acquitted the accused-respondents of the above charges with the finding that the prosecution has failed to establish its case against the accused-respondents beyond all reasonable doubt.

6. Mr. Behera, learned Additional Government Advocate, contended that there are evidence against the accused-respondents that they were caught red handed while transporting the fire wood illegally by cutting the same from the reserved forest. The evidence of P.Ws.1 to 4 is very much clear to that effect. He also contended that it was not possible to procure any independent witness at about 10.00 p.m. in the forest area. There is no material on record to show that the case has been concocted against the accused-respondents.

7. Perused the prosecution report, seizure list and statement of witnesses. In order to prove the offence under Sections 37, 46 and 55-A of the Act, onus lies on the prosecution to prove that the accused-respondents were removing fire wood, which is a forest produce, from the reserved forest and the same along with other articles was seized inside the reserved forest area. None of the witnesses has stated that the fire wood and other articles were seized inside the reserved forest area when the fire wood was being removed from the reserved forest. Rather, from the seizure list (Ext.1), it is found that the fire wood and the bullock carts were seized on the public road near village Kansapal. Moreover, the prosecution has not examined any independent witness to support the version of the departmental officials. Therefore, the prosecution has failed to prove beyond reasonable doubt that the accused-respondents committed an offence under Sections 37, 46 and 55-A of the Forest Act.

8. Rule 21 of the Rules provides for transit permit for transporting the forest produce. It provides for penalties for violation of the Rules. In the instant case, the witnesses examined are all departmental officials. It is admitted by P.W.1 that there were houses near the spot. But, the evidence of the prosecution witnesses does not indicate that they tried to procure independent witness who refused to cooperate with the seizure. P.W.3, the Forest Guard who seized the fire wood, in his evidence stated that the mobile staff produced the accused persons and three carts loaded with fire wood before him. Thereafter, he seized the fire wood and the carts and prepared the seizure list. P.W.2 in his cross-examination has also stated that they took the accused-respondents and the carts loaded with fire wood to Bondhana beat Guard. However, Ext.1 goes to show that seizure was made on the public road. Thus, there is contradiction with regard to the place of seizure. Moreover, there is no independent corroboration

to the seizure. For all these lacunae on the part of the prosecution, the learned J.M.F.C. has rightly come to the conclusion that the prosecution has failed to prove the case against the accused-respondents beyond reasonable doubt; and this Court finds no reason to interfere with such finding.

8. In the result, there is no merit in this appeal, which is accordingly dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
July 19, 2006 / ***Samal***